



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Cubic Field Services, Inc.

**File:** B-252526

**Date:** June 2, 1993

Joel R. Feidelman, Esq., and Anne B. Perry, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester, Keith L. Baker, Esq., Eckert, Seamans, Cherin & Mellott, for JWK International, Inc., an interested party. John Pettit, Esq., and Nike Nihiser, Esq., Department of the Air Force, for the agency. Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Contracting agency had reasonable basis to reject protester's proposal as technically unacceptable where protester in its best and final offer failed to provide resumes to support the qualifications of six replacement personnel; failed to address security requirements with respect to the six replacement personnel; and failed to adequately support a significant reduction in manhours.
2. Agency was not required to reopen discussions after the submission of best and final offers (BAFO) in order to afford the protester an opportunity to cure deficiencies first introduced in its BAFO.

### DECISION

Cubic Field Services, Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. F33600-92-R-0117, issued by the Department of the Air Force to provide operation, maintenance and training support for the Egyptian Air Combat Maneuvering Instrumentation (ACMI) System.<sup>1</sup>

<sup>1</sup>The intent of the ACMI system is to train combat aircrews in air combat maneuvering and no-drop bomb scoring. It consists of the following four subsystems: aircraft instrumentation subsystem, tracking instrumentation subsystem, control and computation subsystem, and display and debriefing subsystem.

Cubic maintains that the Air Force eliminated Cubic's proposal on a requirement not disclosed in the RFP; improperly determined that Cubic's proposal was unacceptable; and failed to conduct meaningful discussions.

We deny the protest.

The RFP, issued on May 26, 1992, required offerors to provide the necessary technical and managerial personnel to ensure total system operation, including complete system equipment maintenance, supply support, formal on-the-job training, software maintenance and programming services, configuration management services and technical library maintenance services. The RFP solicited a firm, fixed-price contract with some cost-reimbursement, no-fee contract line items. Award was to be made to the lowest priced, technically acceptable, responsible offeror complying with the terms of the RFP.

The RFP provided that the following areas would be evaluated to determine technical acceptability: technical, management, and training. Under the technical area, the RFP provided that offers would be reviewed to determine whether the offeror possessed a thorough understanding of operation, maintenance, and training requirements of the ACMI. The technical area contained eight subfactors of equal value. Under the technical area, the RFP required offerors to discuss the experience of all maintenance personnel. Resumes of the proposed maintenance personnel were required to demonstrate their performance on similar programs or with similar equipment. The RFP required offerors to propose at a minimum the following specific contractor personnel positions:

- (1) Supervisor
- (2) Computer Scientist/Program Analyst/Operator
- (3) Computer Maintenance Technician/Operator (2)
- (4) Maintenance Technician/Operator (3)
- (5) Communications Technician (2)
- (6) Maintenance Technician (3)
- (7) Training Instructor/Supervisor
- (8) Training Instructor (2)
- (9) Logistics Analyst/Technical Writer (1)

Additionally, the contractor was required to fill the following positions with Egyptian Nationals:

- (1) Administrative Assistant
- (2) Maintenance Technicians (3)
- (3) Janitor/Driver

The RFP also contained minimum experience and educational requirements for engineers, computer scientists, engineering technicians, and maintenance technicians. During the pre-proposal conference a question was asked concerning the requirement for resumes.<sup>2</sup> The following question was posed and answered by the agency:

"Are resumes required for all personnel or just for key personnel? What about Egyptian hires?  
A. Yes, it applies to everyone other than local hires. Resumes are required on all maintenance technicians Level 2 and above."

This question and answer were included as a part of amendment No. 0002, issued on July 29, 1992.

The RFP further provided that a cost realism analysis would be performed to determine if the estimated cost is realistic, reasonable, cost effective and affordable, and to assess the offeror's understanding of the requirements.

The agency received initial proposals from Cubic (the incumbent contractor) and JWK International, Inc. by the RFP's August 26, 1992, closing date. Cubic, in its initial proposal, proposed 16 American Nationals to fill the required positions and provided resumes and qualifications for each position. Cubic also proposed the five required Egyptian Nationals to fill the required positions of Administrative Assistant, Maintenance Technician and Janitor/Driver. Both proposals were determined to be technically acceptable and included in the competitive range. Discussions were conducted and a request for best and final offers (BAFO) was issued on November 16 with a date of November 30 for receipt of BAFOs. During discussions with Cubic, the agency asked Cubic to clarify its proposal concerning student lodging costs and the total man-hours for training materials development. The BAFO request required offerors to trace and adequately explain any changes from the previous cost and technical proposal.

Cubic, in its BAFO, replaced six of the Americans initially proposed with Egyptian Nationals and did not provide any resumes for these replacements. The agency concluded that Cubic modified substantially its initial offer and failed to trace and provide adequate explanations. Specifically, the agency found that Cubic failed to provide resumes for the use of six Egyptian Nationals for the following positions: Communications Technician (2), Maintenance Technician (3), and Logistics Analyst/Technical Writer (1). Because of this

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<sup>2</sup>Resumes were also required for key management and corporate personnel who were to work on the program.

failure the technical team was unable to determine if the new personnel met the qualifications required by the RFP and if the personnel proposed in the BAFO had the experience or qualifications necessary to meet the system availability requirement.

The agency evaluators also found that Cubic failed to address certain security requirements concerning the six newly proposed Egyptian Nationals and failed to address whether the newly identified employees were to be direct hires or subcontracted. Cubic's failure to address security requirements for the positions that will be filled by Egyptians Nationals affected the management proposal because the RFP required the offeror to ensure that all workforce personnel/subcontractor personnel with access to the Control and Computation Subsystem and Display and Debriefing Subsystem have United States secret clearances.

Cubic also proposed a modified 40-hour standard work week and reduced its man-hours by 80,925. The agency found that, in reducing proposed man-hours by 80,925, Cubic did not provide any information identifying which personnel would work what schedule in order to allow the technical team to determine if proper staffing was provided for the required operating schedule. In this regard, the RFP required the offeror to operate the system on an 8-hour per day, 6 days per week, 52 weeks per year schedule.

The agency also found that Cubic's BAFO contained an inconsistency. It stated that 476 hours would be expended on the Student Guide, and that the guide would consist of an estimated 2,115 pages with a preparation time of 1.13 hours per page, which calculates to approximately 2,390 hours. The agency states that this conflicting information made it impossible to determine what actual hours were to be expended on the guide. The agency also found that Cubic's discrepancy on the calculation of lodging costs for Egyptian Air Force student's training resulted in the underestimation of the lodging costs and made the cost proposal unrealistic for cost evaluation purposes.

By letter dated February 12, 1993, Cubic was notified that its proposal was technically unacceptable and therefore outside the competitive range. Cubic filed this protest with our Office on March 2 after a February 24 debriefing. Award was made to JWK notwithstanding the protest under the urgent and compelling circumstance exception to the stay provision of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(2) (1988).

In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the agency's evaluation to ensure that it was reasonable and in

accord with stated evaluation criteria, and not in violation of procurement laws and regulations. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381; Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. The offeror has the responsibility of submitting adequately written proposals and proposal revisions for the agency to evaluate, see Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530, and an offeror's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43.

Cubic argues that since the RFP specifically excluded the submission of resumes for Egyptian Nationals, the Air Force's rejection of Cubic's proposal for offering Egyptian Nationals without having furnished resumes was based on a requirement not disclosed in the RFP. Cubic further argues that inadequacies of the RFP caused the technical deficiencies in its proposals. Cubic states that the solicitation as initially issued did not identify the personnel requiring resumes; subsequently, as a result of questioning, the agency stated that resumes were only required for "all maintenance technicians Level 2 and above" without providing a definition for this particular type of technician.

The RFP required offerors to propose a minimum of 16 specific personnel and did not limit their nationality. These personnel would be responsible for the operation of the system and for ensuring the system is available as required by the solicitation. The RFP merely provided that five specifically delineated personnel positions be filled with Egyptian Nationals. As stated above, the RFP contained minimum experience and educational requirements for engineers, computer scientists, engineering technicians, and maintenance technicians. The RFP specifically required offerors to discuss the experience of all maintenance personnel and that resumes should demonstrate their performance on similar programs or with similar equipment.

In its initial proposal, Cubic proposed 16 American Nationals to fill the required positions and provided resumes and qualifications for each position. On the basis of these resumes and qualification statements, the agency determined that Cubic proposed personnel with the experience and qualifications necessary to meet the system availability requirement. Cubic, in its BAFO, replaced six of the Americans with Egyptian Nationals and failed to provide resumes or any statements of qualifications for the replacement personnel. The six replaced Americans had an average of over 24 years of experience, some of which directly related to maintaining the Egyptian system. Cubic,

for three categories of personnel positions, did not provide qualification statements for any of its proposed personnel. For over 38 percent of its required workforce, Cubic did not provide the agency with any information showing whether its proposed personnel were qualified to perform. Cubic simply stated that it was taking "great care to ensure that the personnel we have selected have the technical capability to maintain the highest levels of . . . operational availability ." Cubic also failed to provide the agency any evidence that the newly proposed personnel met the stated personnel qualifications. Under these circumstances, we think the agency reasonably concluded that Cubic, by failing to provide evidence of the qualifications of the newly proposed personnel, did not demonstrate that it had a fully qualified workforce for ensuring the required system availability.

Cubic's argument, that all Egyptian Nationals were exempted from the requirement for resumes, is not consistent with the solicitation language or the proposal evaluation scheme. As stated above, the RFP required that offerors discuss the experience of all maintenance personnel, and it stated that resumes of the proposed maintenance personnel should demonstrate their performance on similar programs or with similar equipment. The solicitation contained minimum experience and educational requirements for the very positions for which Cubic offered the additional six Egyptian Nationals. The Air Force could not have evaluated proposals on the same basis if offerors were free to propose Egyptian Nationals for all 16 required positions and thus avoid providing resumes or other descriptions of the qualifications of those individuals. The agency would have had to accept offerors' statements that they were providing qualified personnel without having any evidence of demonstrated ability or experience. While Amendment No. 0002 does state that the requirement for resumes applies to all except "local hires", we believe from its context that this exemption clearly applied only to those positions specifically reserved for Egyptian Nationals.

Cubic also made significant reductions in its proposed manhours in its BAFO without adequate justification. Cubic merely stated that the use of flex-scheduling would provide an "operationally ready system in accordance with the provisions of the RFP." Cubic states in its comments to the agency report submitted in response to the protest that its BAFO information regarding the staggered shifts did not supersede what Cubic proposed in its initial proposal that the agency states contained adequate information. The

record shows that Cubic never explained in its BAFO how it would operate the system as required by the solicitation with significantly less manhours than originally proposed.<sup>3</sup>

We conclude that the agency reasonably considered Cubic's proposal to be technically unacceptable because of its failure to demonstrate the qualifications of over 38 percent of its required personnel and its failure to demonstrate how it could perform with its unexplained reduction in manhours. Cubic assumed the risk that changes in its final offer might raise questions about its ability to meet the requirements of the solicitation and, thus, result in rejection or downgrading of its proposal. Comarco, Inc., B-225504; B-225504.2, Mar. 18, 1987, 87-1 CPD ¶ 305. Contrary to the protester's position, an agency is under no obligation to reopen discussions to provide an offeror the opportunity to remedy deficiencies first introduced in the offeror's BAFO. See id.

The protest is denied.



*for* James F. Hinchman  
General Counsel

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<sup>3</sup>We believe that the deficiencies introduced by Cubic in its BAFO concerning the lack of resumes and the reduction in manhours were sufficient for the agency to conclude that Cubic failed to demonstrate its ability to perform the requirement. We therefore will not discuss the reasonableness of the agency's determination that Cubic's BAFO was also technically unacceptable because of alleged discrepancies in its proposed hours for preparing the student guide and in its lodging costs for students.

<sup>4</sup>While the agency made a determination that Cubic's BAFO was outside the competitive range, Cubic's BAFO was essentially rejected as being technically unacceptable because of unexplained changes. In this regard, a proposal that an agency properly finds technically unacceptable may be excluded from the competitive range irrespective of its lower proposed price. Labat-Anderson, Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244.